

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4764 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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UMA S HARIYANI

Versus

INSPECTOR GENERAL OF REGISTRATION OF DOCUMENTS  
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Appearance:

MR ND NANAVATI for Petitioner

MR HM BHAGAT for Respondent No. 1  
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CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 21/09/2000

ORAL JUDGEMENT

By this application under Article 226 of the Constitution of India, the petitioner challenges the legality and validity of the order passed by the Sub-registrar, Veraval on 11th April, 1989 and the other orders in succession passed by different authorities.

2. The petitioner purchased the shop. A Sale Deed thereof was then executed on 8th April, 1987. The Sale Deed executed was then presented before the Sub-registrar, Veraval on 9th April, 1987 i.e. on the next date of the execution for registration. On 12th April, 1988, the petitioner was informed that prayer for

registration was refused as the document was not in consonance with Sec. 34 of the Registration Act. Against the said order, the petitioner preferred an appeal before the District Registrar, Junagadh, being Registration Appeal No. 1/88/1176. On 16th March, 1989, the appeal was allowed and the Sub-registrar was directed to undergo necessary formalities. The petitioner, thereafter, appearing before him, presented an application for further action. On 5th April, 1989, the petitioner as directed by the District Registrar, appeared before the Sub-registrar, Veraval and presented the application Annexure-E for further action in the matter. To the utter surprise of the petitioner, she received a letter Annexure-F dtd. 11th April, 1989 directing her that when necessary declaration was not made within the specified period, pay the penalty amount of Rs.23250/- and file the declaration. As the petitioner was not heard on the point, she filed an appeal before the District Registrar, copy of the memo of which is produced at Annexure-E. On 18th May, 1989 the District Registrar confirming the order passed, rejected the appeal. He had also not given the opportunity to submit to the petitioner. Thereafter, a telegram for District Registrar, through Advocate Shri K.G. Joshi. It was then informed on 9th April, 1989 that the petitioner will have to undergo necessary formalities which she was under the law bound to. Thereafter, from the District Registrar on 3rd August, 1989, the petitioner received a notice intimating her to pay up the penalty amount to be reckoned at 10 times to the required fees and following the procedure under Sec.34 of the Act. The petitioner then preferred an appeal before the Inspector General of Registration of Document, Ahmedabad under Sec. 17 of the Indian Registration Act. The appeal was rejected and intimation thereof was given on 14th March, 1990, copy of which is produced at Annexure-M, wherein it is mentioned that the appeal being not in conformity with Sec. 34(1), was liable to be dismissed and question of giving opportunity of being heard did not arise. It is against these orders, the present petition is filed.

3. The learned advocate representing the petitioner tapering of his submissions after query was made, confines to the only ground of which he is assailing the petition and it is that the petitioner did not get the opportunity to submit, before the Sub-registrar after the District Registrar on 16th March, 1989 passed the order and according to him more shocking was that the higher authorities, thereafter as and when moved in appeal, fell in the same line by not providing the opportunity to

submit to the petitioner. According to him, therefore the orders passed are arbitrary, perverse and cannot be maintained in law.

4. In reply to such submissions, Mr. Sudhanshu Patel, the learned A.G.P. has supported the order submitting that the authorities have fallen into no error when the petitioner did not approach the authority within the time prescribed.

5. In such application, a Writ Jurisdiction can be exercised, if there is jurisdictional error or a procedural error. In the case on hand, the authorities have committed procedural error. It is cardinal principle of law that whenever the order affecting the interest or right of the party is to be passed, the authority has to hear that party and then pass appropriate order. If in violation of the principle of natural justice, the order is passed, the same will be procedurally ultravires and therefore it will suffer from a jurisdictional error. The order passed must, therefore, be held bad in law and on that count, the same has to be upset.

6. In the case on hand, after the Sale Deed was presented on 9th April, 1987 for registration, no action for one year was taken and on 12th April, 1988, the petitioner was informed that the registration was refused and penalty amount should be paid. Before passing such order, the petitioner was not informed to make any submission in that regard and therefore, the District Registrar rightly set aside the order on 16th March, 1989 and referred the matter back for fresh consideration to the Sub-registrar; but the Sub-registrar thereafter also disregarding the direction given, passed the order on 11th April, 1989 (Annexure-F), refusing to register the document and straightway directing the petitioner to pay the penalty amount of Rs.23250/-. Thereafter, appeal was preferred before the District Registrar who also on 11th May, 1989 confirmed the order without giving any opportunity to submit to the petitioner. It seems that the District Registrar also ignored his first order dtd. 16th March, 1989. Then an appeal was preferred before the Inspector General of Registration of Documents, who also did not offer any opportunity to submit. Thus all the authorities have passed the order without affording any opportunity to the petitioner to submit and set at naught the principle of natural justice which they were bound to follow before passing the order. The orders, therefore, arbitrary and perverse. This is, therefore, fit case wherein interference is necessary. The Deputy

Sub-registrar at Veraval is required to be directed to again consider the matter as per the order passed by the District Registrar, Junagadh dtd. 16th March, 1989, copy of which is produced at Annexure-D, giving reasonable opportunity to the petitioner to submit in the matter.

7. While departing, I am constrained to note that the authorities have disregarded their duty and obligation to follow the principle of natural justice as a result the petitioner had to undergoing several hardships move from pillar to post. The higher authority of the above referred authorities shall, it is hoped take appropriate action administratively and pass the order most fit in the circumstances and facts before him.

8. For the aforesaid reasons, the petition is allowed. The orders dtd. 5th April, 1989 (Annexure-E), the order dtd. 11/4/1989 (Annexure-F), the order dtd. 2/5/1989 (Annexure-G) and the order dtd. 18/5/1989 (Annexure-H), and the order dtd. 3/8/1989 (Annexure-K) are hereby quashed and set aside. and the Sub-registrar, Veraval is hereby directed to consider the matter afresh giving reasonable opportunity to the petitioner to submit and then to pass appropriate order in accordance with law.

Rule accordingly made absolute.

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